

CAUSE NO. _____

ZACHARY WHITE
Plaintiff,

v.

DREAM MOTORS, LLC d/b/a
MERCEDES-BENZ OF
THE WOODLANDS
Defendants.

IN THE DISTRICT COURT
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
OF HARRIS COUNTY, TEXAS
_____ **JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Zachary White, Plaintiff herein, and files this Original Petition and Requests For Disclosure complaining of Dream Motors, LLC d/b/a Mercedes-Benz of The Woodlands, and would respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

Pursuant to Rule 190.3 of the Texas Rules of Civil Procedure, Plaintiff alleges that discovery in this case should be conducted under Level 2.

II. PARTIES

Plaintiff Zachary White is a citizen of Harris County, Texas. He is represented *pro bono* in this case by the undersigned lawyers and law firms.

Defendant Dream Motors LLC d/b/a Mercedes-Benz of The Woodlands ("Mercedes-Benz of The Woodlands) is a Texas limited liability company with its principal place of business located at 16917 Interstate 45 North, The Woodlands, Texas 77385. Defendant can be served with process via its registered agent, Kelly M. Beaudry, at 3003 W. Alabama, Houston, Texas 77098.

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

III. VENUE AND JURISDICTION

Venue is proper and maintainable in Harris County, Texas under §15.002(a)(1) of the Texas Civil Practice & Remedies Code because all or a substantial part of the events or omissions giving rise to the claims made the basis of this lawsuit occurred in Harris County, Texas. Specifically, the jury service which forms the basis of Plaintiff's claims against the Defendant occurred in the 133rd District Court of Harris County, Texas. The Plaintiff is also a resident of Harris County, Texas.

This Court has jurisdiction in this cause since the damages of Plaintiff exceed the minimum jurisdictional limits of this Court.

IV. FACTS

This case arises because the Defendant, Mercedes-Benz of The Woodlands, believes it is acceptable to fire an employee for serving on a jury in Harris County. Mercedes-Benz of The Woodlands is quite wrong about that. In the state of Texas, it is not acceptable in the least for an employer to terminate, or penalize, or threaten to penalize, an employee because of jury service. Indeed, doing so is expressly prohibited by Texas law. Because Mercedes-Benz of The Woodlands has acted in violation of this important law, it should be reminded of the harsh penalties for doing so, and now it must pay for what it has done here.

Plaintiff Zachary "Zach" White is 19 years old. He is a 2018 high school graduate and a life-long member of a local church. In October 2018, he was hired by Mercedes-Benz of The Woodlands to work in their service department. It was not a glamorous job, but it was an honest one. Zach was a full-time employee, working forty hours per week and where necessary, he worked overtime, as well. He was paid \$12 per hour.

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

In early 2019, Zach received a jury summons from the Harris County District Clerk's office. Unlike some people who receive jury summons, Zach took his civic duty obligation seriously, and he complied with the jury summons. He was raised to respect the law and honor his civic duty by his parents. Indeed, his father is a career law enforcement officer who works as a detective.

Zach told his supervisor at Mercedes-Benz of The Woodlands that he had received a jury summons. However, in response to hearing about the jury summons from Zach, his supervisor in the service department of Mercedes-Benz of The Woodlands encouraged Zach to "ignore" the jury summons. Fortunately, Zach ignored this poor advice from his supervisor at Mercedes-Benz of The Woodlands. He went to jury service as required of him by Texas law. In fulfillment of his civic duty, Zach reported for jury service on February 5, 2019 to the Harris County Jury Assembly room in downtown Houston.

Along with 60 other prospective jurors, Zach was soon brought to the 133rd District Court of Harris County, Texas for jury selection. Jury selection lasted two days. Zach was selected as an alternate juror in a commercial dispute styled as Cause No. 2013-25191; *Harlow Management, LLC et al v. Stites Management, LLC*; in the 133rd District Court of Harris County, Texas.

The lawyers who represent Zach in this case are the lawyers who represented the opposing parties in the Harlow Management lawsuit. For years during the pendency of the Harlow Management lawsuit, these lawyers fought hard and respectfully disagreed with one another on behalf of their respective clients. Indeed, they continue to fight hard and respectfully disagree with one another on behalf of their clients now that the trial in the Harlow Management

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

case has concluded, and post-verdict and/or appellate proceedings unfold. But on this fact they uniformly agree: jury service must be respected and honored by employers in the state of Texas. Thus, these opposing lawyers have joined together here, and agreed to represent Zach in this case free of charge, because they recognize and sincerely appreciate that without the sacrifices made by Zach and the other jurors who served along with him, the resolution of their clients' claims in the Harlow Management lawsuit would not have been possible.

Once the trial started, for *four weeks* the lawyers argued their clients' cases before Zach and the other members of the jury in the Harlow Management case, with the Hon. Jaclanel McFarland presiding in the 133rd District Court of Harris County. Per Judge McFarland's orders, trial proceeded from Tuesday thru Friday each week. On Mondays, Judge McFarland conducted hearings in other cases to ensure that her motion docket could still proceed while this lengthy trial was underway.

Even as an alternate juror, every day of the four week trial, Zach was in the courtroom, sitting in the jury box along with the other fellow jurors, listening to the evidence presented. The trial concluded on the evening of February 28, 2019. Once closing arguments finished, as an alternate juror, Zach was not permitted to participate in the jury deliberations. Still, until deliberations began in the jury room, Zach's physical presence was required by Texas law throughout the duration of the four week trial.

On February 25, 2019, before Zach's jury service concluded, Zach was fired by Mercedes-Benz of the Woodlands pursuant to the following letter:

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE



Mercedes-Benz
of The Woodlands

February 25, 2019

Zach R. White
20211 Cypresswood Glen
Sterling, TX 77373

Dear Zach,

You have been absent from your assigned workplace since February 11, 2019. You agreed to work Monday and Saturday while you did jury duty Tue-Friday. We discussed that if anything would change with jury duty, you would update your immediate supervisor and myself. You failed to show up for your scheduled shifts outside of the jury duty schedule. Because of your absence which has been for at least three workdays and has not been approved, I must assume you have abandoned your position. Your last official date of employment was February 11, 2019. Your termination due to job abandonment was effective on February 25, 2019.

You will be paid on March 1, 2019, for all time you have worked during the last pay period. Your paycheck will be direct deposited on that date as well. Please return any company property you may have immediately.

If you feel this is a mistake and there are any extenuating circumstances that have prevented you from informing your supervisor of a valid absence, please contact us immediately.

Sincerely,

April Lamm
HR / Payroll

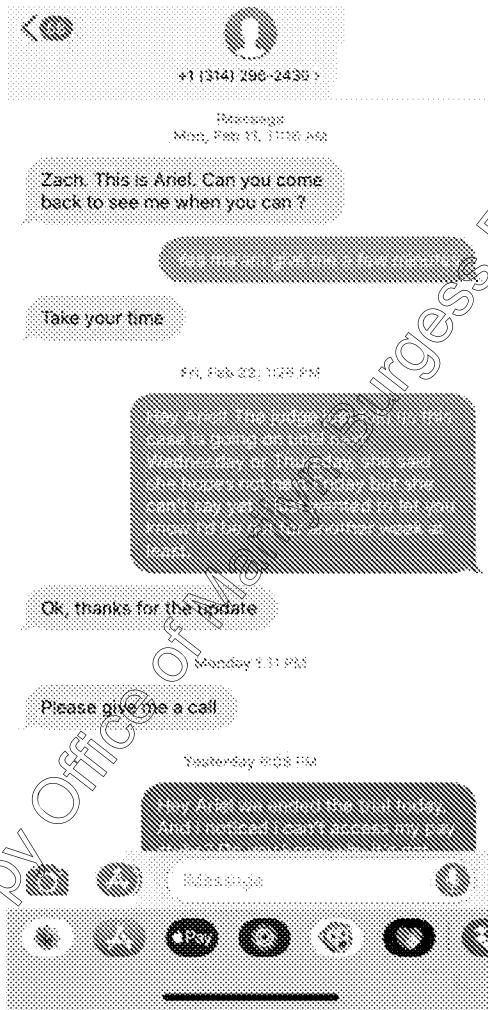
The Luxury of Convenience

3000 Interstate 45 South, The Woodlands, TX 77388 | 936.252.7500

This letter, which ironically contains the mantra of “The Luxury of Convenience”, is indeed convenient for Mercedes-Benz of The Woodlands. It is also false and self-serving. It is simply untrue that Zach failed to show up for work at Mercedes-Benz of The Woodlands outside of his jury service schedule. He did not “abandon his position” as this letter incorrectly states.

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

Indeed, after he was selected for jury service, Zach worked on Monday, February 11, 2019. Zach spoke to the Human Resources director, Ariel Love, about his jury service on February 11, 2019, too. He also exchanged text messages on February 22, 2019 about the trial schedule with Ms. Love, and told her in those text message exchanges when the trial was finished:



In addition, despite the implication in the February 25, 2019, termination letter Ms. Love wrote, Zach was also not officially scheduled for work on any other days after Feb. 11 by his supervisor.

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

Lastly, although his supervisor told him to ignore jury service altogether, the Human Resources director at Mercedes-Benz of The Woodlands told Zach that he would be paid his full, 40 hour work week wages by Mercedes-Benz of The Woodlands while he served on the jury. At the time it was made, it was a nice gesture, and one that is not required under Texas law for Mercedes-Benz of The Woodlands to fulfill, as employers in Texas are not required to pay their employees for serving on a jury. The trouble is that it was an *empty* gesture by Mercedes-Benz of The Woodlands. Contrary to what Ms. Love told Zach about getting paid by his employer while he was on the jury, when he was fired for serving on the jury, Zach's last paycheck did not include payment from Mercedes-Benz of The Woodlands for the time he was serving on a jury.

V. CAUSE OF ACTION—VIOLATION OF THE JURORS RIGHT TO REEMPLOYMENT ACT

The state of Texas, like every state in the United States as well as the United States federal government, guarantees the right to trial by jury. The right to trial by jury is enshrined in both the Texas and United States Constitutions. In his inaugural address to the nation, President Thomas Jefferson listed the right to trial by jury as one of the essential principles of government to which “The wisdom of our sages, and blood of our heroes, have been devoted...”

To protect this fundamental right to a jury trial, the state of Texas punishes employers who disrespect jury service by firing employees who serve on juries. Under a Texas law called the Jurors Right to Reemployment Act, “A private employer may not terminate the employment of a permanent employee because the employee serves as a juror.” Tex. Civ. Prac. & Rem. Code § 122.001(a). An employer who violates this law commits a Class B misdemeanor. Tex. Civ. Prac. & Rem. Code § 122.021. “In addition to and without limiting any other sanction or remedy available, a judge may punish by contempt an employer who terminates, penalizes, or threatens

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

to penalize an employee because the employee performs jury duty.” Tex. Civ. Prac. & Rem. Code § 122.0022.

Zach was a permanent employee at Mercedes-Benz of The Woodlands as that term is understood in the law. He certainly was not a temporary employee. He worked full time, 40 hours per week, plus overtime when his employer required it. He therefore qualifies for protection under the statute.

Mercedes-Benz of The Woodlands violated this statute (Tex. Civ. Prac. & Rem. Code § 122.001(a)) by terminating, penalizing, or threatening to penalize, Zach’s employment because he was serving as a juror in the 133rd District Court of Harris County, Texas.

VI. DAMAGES

Under Texas law, “A person who is injured because of a violation of this chapter [The Jurors Right to Reemployment Act] is entitled to reinstatement to his former position and to damages in an amount not less than an amount equal to one year’s compensation nor more than an amount equal to five years’ compensation at the rate at which the person was compensated when summoned for jury service.” Tex. Civ. Prac. & Rem. Code § 122.002(a).

Zach does not seek reinstatement in this lawsuit, because understandably, he does not wish to return to work for an employer who dishonors jury service by firing employees for simply fulfilling their civic duty and serving on a jury. He is actively searching for employment with an employer who respects and follows the law instead of one who breaks it and then writes false and self-serving letters about what they have done. Instead of reinstatement, he seeks the other remedy provided for under Texas law: a minimum of one year’s compensation and a maximum of five year’s compensation, at the rate of \$12 per hour (the amount he earned on the day he was summoned for jury service). Tex. Civ. Prac. & Rem. Code § 122.002. He does so to

PLAINTIFF’S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

enforce the law, and to send a message about the importance of jury service to all employers in Texas who may think incorrectly that they too can fire employees for simply serving on a jury.

He is not seeking attorney's fees because the lawyers who represent him are doing so for free and thus he is not having to pay his lawyers for their work on his behalf in this case.

As a result of the incident made the basis of this lawsuit, described in the preceding paragraphs and the intentional acts of Defendant, Zach sustained financial damages. The monetary relief sought by Zach is set forth in the Jurors Right to Reemployment Act (Tex. Civ. Prac. & Rem. Code § 122.001 *et seq.*) and within Tex. R. Civ. P. 47(c)(3).

Zach further seeks both prejudgment and post-judgment interest as allowed by law, for all costs of court, actual damages, compensatory damages, exemplary damages, and all other relief, both in law and in equity, to which he may be entitled. The sum of Plaintiff's damages is within the jurisdictional limits of the Court.

Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiff seeks monetary relief over \$100,000.00 but no more than \$200,000.00.

VII. REQUESTS FOR DISCLOSURE

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff requests that Defendant disclose within 50 days after service of process, the information or material described in Rule 194.2.

VIII. JURY DEMAND

Plaintiff respectfully, and especially in this particular case, requests a trial by jury.

IX. REQUEST FOR PRODUCTION

Pursuant to Rule 196 of the Texas Rules of Civil Procedure, within 50 days after service of process, Plaintiff demands that the Defendant produce the following:

1. A copy of every lawsuit, or every answer to any lawsuit, that Dream Motors LLC d/b/a Mercedes-Benz of The Woodlands or any of its affiliate car dealerships or companies has ever filed in any court of law which has included a jury demand.
2. A copy of Defendant's policies and procedures related to jury service for its employees while Plaintiff was employed by the Defendant.

X. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein and that upon final trial and other hearing of this cause, that Plaintiff recover damages from Defendant in accordance with the evidence, including economic damages, non-economic damages, as the jury deems appropriate; that Plaintiff recover costs of court herein expended; that Plaintiff recover interest to which he is justly entitled under the law, both prejudgment and post judgment; and for such other further relief, both general and special, both in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

TERRY & THWEATT, P.C.

By: /s/ L. Lee Thweatt

L. Lee Thweatt (lead counsel)
State Bar No. 24008160
Joseph D. Terry
State Bar No. 24013618
One Greenway Plaza, Suite 100
Houston, Texas 77046-0102
Telephone: (713) 600-4710
Facsimile: (713) 600-4706
lthweatt@terrythweatt.com
jterry@terrythweatt.com

PIERCE & O'NEILL, LLP

Jesse R. Pierce
State Bar No. 15995400
(713) 634-3636 Direct
jpierce@pierceoneill.com
Scott Humphrey
State Bar No. 24032442
shumphrey@pierceoneill.com
4203 Montrose Blvd.
Houston, Texas 77006
(713) 634-3600 Main
(713) 634-3601 Fax

**BERG PLUMMER
JOHNSON & RAVAL, LLP**

Geoffrey Berg
gberg@bergplummer.com
Texas Bar No. 00793330
Kathryn E. Nelson
knelson@bergplummer.com
Texas Bar No. 24037166
3700 Buffalo Speedway, Suite 1150
Houston, Texas 77098
713-526-0200 (tel)
832-615-2665 (fax)

**NATHAN SOMMERS JACOBS
A Professional Corporation**

George R. Gibson
Texas Bar No. 00793802
Matthew F. Davis
Texas Bar No. 24092325
2800 Post Oak Boulevard, 61st Floor
Houston, Texas 77056-6102
713.960.0303 - phone
713.892.4800 – fax
ggibson@nathansommers.com
mdavis@nathansommers.com

PRO BONO COUNSEL FOR PLAINTIFF ZACHARY WHITE

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE